IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
REVIEW PETITION (L) NO.102 OF 2006
IN
NOTICE OF MOTION NO.64 OF 2006
IN
WRIT PETITION NO.1650 OF 2005

New Great Eastern Spg. & Wvg. Miills Ltd. .. .. Petitioner (Org.Res.No.27)

v/s.

Indian National Trust Fort Art & Culture Heritage & ors. .. .. Respondent Nos.1 to 3 (Org.Petitioners) Res.Nos.4 to 35 (Org.Res.Nos.1 to 26 & 28 to 32)

Mr.Saleh Doctor, Senior Counsel with Mr.Shyam Mehta i/by M/s.Kanga & Co. for petitioner.

Mr.Mustafa Doctor with Mr.Kedar Dighe for res.Nos.1 to 3.

Mr.Vinod Mahadik for BMC.

Mrs.Meena Doshi for respondent No.10-NTC.

Mr.Yogesh Kumar i/by M/s.Paras Kuhad & Associates for respondent No.11.

Mr.Kiran Bhosale i/by M/s.Wadia Gandhy & Co. for respondent Nos.17 & 32.

Mr.Mohan Salian i/by M/s.Gagrats & Co. for respondent No.18.

Respondent No.4 is served.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 12th December 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. This Review Petition seeks to review the order dated 5th May 2006 passed by a Division Bench of this Court, to which one of us (H.L.Gokhale, J.) was a member. The order restrained the various Textile Mills which were having heritage structures from proceeding to demolish them unless appropriate permissions were obtained from the concerned Heritage Authorities. It so happened that subsequent to this order, a Review Petition was filed by one of the Textile Mills concerned viz. Shree Ram Mills Limited. That Review Petition bearing No.81 of 2006 was heard by this Bench and this Bench noted that the petitioner - Shree Ram Mills had been granted approval for the development of its property prior to the publication of the heritage list by the Municipal Corporation on 22nd April 2006. The Division Bench, therefore, by its order dated 8th September 2006, allowed that Review Petition in so far as Shree Ram Mills Limited was concerned permitting it to proceed on the basis of the development permission which it had already obtained.

3. Mr.Saleh Doctor, learned Counsel appearing for the petitioner, submits that the case of the

petitioner is similar to that of the Shree Ram Mills' case. He points out that way back on 21st July 2004, the Executive Engineer (Building Proposals) of the Municipal Corporation had considered the proposal of the petitioner for sub-division of its plot and with reference to that he had written to its Architect as follows:-

> " With reference to above letter, the plan submitted for layout / sub-division of above referred plot is approvable in nature as per D.C. Regulation. Final approval will be issued after submission of the registered undertaking agreeing to the terms and conditions annexed herewith. It is hereby requested to pay the layout deposit of Rs.62,650/- only."

Mr.Saleh Doctor points out that the petitioner is undoubtedly ready to give the necessar undertaking as required under this communication and is also ready to pay the lay out deposit of Rs.62,650/-. He is making this statement on the instructions of one Mr.V.K. Lohiya, Commercial Manager of the petitioner, who is present in Court. Mr.Saleh Doctor further points out that as per this permission the petitioner was permitted

to pull down the Chimney and to fill a pond in the property. These are the only two structures which are listed in the heritage list from the property belonging to the petitioner. He, therefore, submits that the order passed on 5th May 2006 be reviewed to this limited extent and the petitioner be permitted to carry out the development as per this letter dated 21st July 2004.

4. Mr.Mustafa Doctor, learned Counsel appearing for respondent Nos.1 to 3, on the other hand, submitted that the case of the petitioner herein is not similar to that of the Shree Ram Mills' case. He makes a distinction between the two cases by pointing out that whereas Shree Ram Mills had the IOD as well as the Commencement Certificate issued to it prior to the publication of the list of the heritage structures on 22nd April 2006 and in the present case, the Commencement Certificate is not issued nor the IOD. He, therefore, submits that there is no occasion to review the order and if that is so permitted, the other Mills will also apply accordingly.

5. We have considered the submissions of both the Counsel. What is material to note is that if

any such approval or any intimation of approval is issued prior to the date on which the heritage list was published, surely the parties had certain expectations. It is on the principle of legitimate expectation that the order was passed by this Bench on 8th September 2006. If the Municipal Corporation has written that the lay out was approvable and that certain conditions were to be accepted by the petitioner and undertaking was to be given, surely the listing of heritage items subsequent thereto cannot be used as a ground to stall the ensuing development which the petitioner proposes to carry out.

6. In the circumstances, we accept the submissions of Mr.Saleh Doctor and recall the order passed on 5th May 2006 to the extent it applies to the petitioner - New Great Eastern Spinning and Weaving Mills Ltd.

7. Accordingly, the Review Petition is allowed in the aforesaid terms, though without any order as to costs.

8. Mr.Mustafa Doctor appearing for respondent Nos.1 to 3 applies for stay of this order. Application for stay is rejected.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)